

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RICHARD BOBRIK,

Plaintiff,

v.

NORTHWEST CENTER FOR THE  
RETARDED,

Defendant.

CASE NO. C03-3322JLR

ORDER

**I. INTRODUCTION**

This matter comes before the court on cross-motions for summary judgment from Plaintiff Richard Bobrik and Defendant Northwest Center for the Retarded (“NWCR”). (Dkt. ## 39, 51). Neither party has requested oral argument, and the court finds the motions suitable for disposition based on the briefing, declarations, and exhibits that each party provided. For the reasons stated below, the court GRANTS NWCR’s motion for summary judgment (Dkt. # 39), DENIES Mr. Bobrik’s cross-motion (Dkt. # 51), and directs the clerk to enter judgment for NWCR.

**II. BACKGROUND**

Defendant NWCR is a charitable organization dedicated to finding vocational opportunities for individuals with disabilities. Among other activities in furtherance of that mission, NWCR endeavors to employ individuals with disabilities at NWCR

1 facilities. To raise funds for its programs, NWCR operates donation centers to receive  
2 donations of household goods from the Seattle community.

3 Mr. Bobrik began working at an NWCR donation center in 2000. He suffers from  
4 a condition that limits the mobility in his back and legs. The disability does not permit  
5 him to lift heavy objects. Aware of that limitation, NWCR consistently exempted Mr.  
6 Bobrik from lifting items over 10 pounds, and generally ensured that his job required  
7 only light duty work. Mr. Bobrik does not dispute that NWCR initially accommodated  
8 his disability. For example, Mr. Bobrik worked on the second floor of the building  
9 housing the donation center. He had difficulty ascending the outside staircase that most  
10 employees used. NWCR gave him access via keypad to the first floor so that he could  
11 use an indoor elevator.  
12

13 In 2003, a series of disputes arose between Mr. Bobrik and NWCR. In January  
14 2003, a new tenant moved into the building housing the donation center. The new tenant  
15 replaced the first floor keypad access with a lock and key. For security reasons, the new  
16 tenant would not provide keys to NWCR employees, but Mr. Bobrik was still permitted  
17 to use the door to access the elevator. Mr. Bobrik complained that the door was  
18 sometimes not unlocked by the start of his shift at 7:00 a.m. NWCR responded by taking  
19 measures to help ensure that the door would be open by 7:00 a.m. Mr. Bobrik's  
20 supervisor, Randy Stockton, began propping the door open himself to ensure Mr. Bobrik  
21 had access. In addition, NWCR assured Mr. Bobrik that he would not be considered  
22 tardy if he was late to work because he could not access the first floor door. There is no  
23 indication that Mr. Bobrik was ever forced to use the stairs. There is no indication that  
24 he was ever subject to adverse treatment as a result of his need to use the elevator. By  
25 late February 2003, NWCR announced a reorganization of its donation center staffing  
26 that changed shift starting times for employees in Mr. Bobrik's position to 8:00 a.m. Mr.  
27 Bobrik's issues regarding the first floor door became moot as a result of the change.  
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1 In early February 2003, Mr. Bobrik suffered an unspecified injury to his back  
2 while working. On February 13, 2003, Mr. Bobrik visited Dr. Daniel Chilczuk, who  
3 recommended two weeks of light duty work. Mr. Bobrik did not request additional  
4 accommodation from NWCR as a result of this recommendation.

5 On February 21, 2003, NWCR announced a reorganization of its donation center  
6 workforce. The reorganization had the effect of placing the burden of loading and  
7 unloading vans on employees in Mr. Bobrik's position. At the meeting announcing the  
8 reorganization, Mr. Bobrik immediately began to complain that he could not fulfill the  
9 new duties. Mr. Stockton and another supervisor, Jack Campbell, asked Mr. Bobrik if he  
10 would discuss his limitations after the meeting. Mr. Bobrik declined to speak to either of  
11 them. On February 27, 2003, Mr. Campbell and Mr. Stockton approached Mr. Bobrik,  
12 provided him with a job description of his restructured position, and asked him to have a  
13 doctor address which duties he could not perform.  
14

15 On the same day, Mr. Bobrik met with Dr. Chilczuk again. Based on Mr.  
16 Bobrik's representation that NWCR would require him to "work full time, regular duties,  
17 which involve[] bending and lifting," he recommended four weeks off work. Bobrik  
18 Ex. 7. Mr. Bobrik stopped coming to work after meeting with Dr. Chilczuk, but did not  
19 inform NWCR that he would be taking leave. In response to a contact from Dr.  
20 Chilczuk, an NWCR human resources employee telephoned Mr. Bobrik on March 3,  
21 2003. He stated that he could perform light duty work. The employee contacted Dr.  
22 Chilczuk to have him confirm Mr. Bobrik's eligibility for light duty work. Dr. Chilczuk  
23 responded that Mr. Bobrik would be ready for light duty work by approximately March  
24 13, 2003. In the meantime, NWCR employees contacted Mr. Bobrik to schedule a  
25 meeting to discuss possible accommodations for Mr. Bobrik under the reorganization  
26 plan. Mr. Bobrik attended a meeting with John Schindler (who supervised Mr.  
27 Stockton), Mr. Stockton, and Jean Kantu, another supervisor. Mr. Bobrik admits to being  
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1 uncooperative during the meeting, admits that he made serious insults to Mr. Schindler,  
2 and admits that he threatened to leave. Mr. Schindler told Mr. Bobrik that his leaving  
3 would be construed as a resignation. Mr. Bobrik left. NWCR terminated his  
4 employment.

5 Mr. Bobrik sued NWCR for failure to accommodate his disability under  
6 Washington law, for non-compliance with the federal Family and Medical Leave Act  
7 (“FMLA”), and for retaliatory discharge under Washington law. NWCR seeks summary  
8 judgment on all of Mr. Bobrik’s claims.

### 9 III. ANALYSIS

10 In examining these cross-motions, the court must draw all inferences from the  
11 admissible evidence in the light most favorable to the non-moving party. Addisu v. Fred  
12 Meyer, Inc., 198 F.3d 1130, 1134 (9th Cir. 2000). Summary judgment is proper where  
13 there is no genuine issue of material fact and the moving party is entitled to judgment as  
14 a matter of law. Fed. R. Civ. P. 56(c). The moving party bears the initial burden to  
15 demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477  
16 U.S. 317, 323 (1986). Once the moving party has met its burden, the opposing party  
17 must show that there is a genuine issue of fact. Matsushita Elect. Indus. Co. v. Zenith  
18 Radio Corp., 475 U.S. 574, 586-87 (1986). The opposing party must present significant  
19 and probative evidence to support its claim or defense. Intel Corp. v. Hartford Accident  
20 & Indem. Co., 952 F.2d 1551, 1558 (9th Cir. 1991). Where a question presented is  
21 purely legal, summary judgment is appropriate without deference to the non-moving  
22 party.

#### 23 A. NWCR Provided Reasonable Disability Accommodations to Mr. Bobrik.

24 The court turns first to Mr. Bobrik’s claims that NWCR failed to accommodate his  
25 disability. Washington law provides persons with a disability the right to  
26 accommodation. RCW §§ 49.60.030(c), 48.60.180(2). Washington courts have  
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1 construed the statute to impose a duty on employers to “reasonably accommodate” a  
2 person with a disability who is qualified to perform the “essential functions” of a job, and  
3 who provides his employer with notice of his disability and accompanying limitations.

4 Davis v. Microsoft Corp., 70 P.3d 126, 131 (Wash. 2003).

5 Mr. Bobrik’s case founders because he has no evidence that NWCR failed to  
6 reasonably accommodate him. The parties agree that Mr. Bobrik suffered from a  
7 disability and provided notice to NWCR. Their disputes focus on the reasonableness of  
8 NWCR’s accommodation. An employer’s duty to accommodate extends only to  
9 “removing sensory, mental or physical impediments to the employee’s ability to perform  
10 his or her job.” Doe v. Boeing Co., 846 P.2d 531, 538 (Wash. 1993). Provided that it  
11 satisfies this duty, an employer has no obligation to provide an employee with the  
12 specific accommodation he has requested. Snyder v. Medical Serv. Corp., 988 P.2d  
13 1023, 1030 (Wash. Ct. App. 1999).  
14

15 As to Mr. Bobrik’s difficulty using the stairs to access his second floor workspace,  
16 there is no dispute that NWCR provided reasonable accommodation. NWCR never  
17 required him to use the stairs, made every effort to provide him with access to the first  
18 floor elevator, and assured him that if he was tardy as a result of delays in accessing the  
19 first floor elevator, there would be no negative repercussions. The court finds these  
20 undisputed actions to be reasonable as a matter of law. Although NWCR did not provide  
21 Mr. Bobrik with the precise accommodation he requested (a key to access the first floor),  
22 it undisputedly removed all impediments that the staircase to the second floor imposed on  
23 Mr. Bobrik.

24 As to Mr. Bobrik’s general requests for light duty accommodations, including  
25 requests he made in light of the February 2003 NWCR reorganization, the court finds no  
26 disputed facts sufficient to carry this claim to a jury. There is no dispute that before the  
27 reorganization, NWCR consistently provided light duty accommodations for Mr. Bobrik.  
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1 Mr. Bobrik does not contest that these accommodations allowed him to work. After the  
2 reorganization, it is likely that Mr. Bobrik needed additional accommodation. It is  
3 undisputed, however, that NWCR began the process of accommodating him. NWCR  
4 never forced Mr. Bobrik to perform the additional lifting that his post-reorganization  
5 position would require. Instead, NWCR requested that Mr. Bobrik's doctor identify the  
6 functions listed in his job description that Mr. Bobrik would be unable to perform. Mr.  
7 Bobrik was terminated, however, before NWCR could implement any accommodations.  
8 Indeed, Mr. Bobrik's behavior ensured that his termination came before NWCR could  
9 even have a discussion with him about new accommodations. Under these  
10 circumstances, Mr. Bobrik has no claim for failure to accommodate his disability.

11 **B. NWCR Did Not Violate Mr. Bobrik's FMLA Rights.**

12 Mr. Bobrik contends that NWCR violated the FMLA when it forced him to work  
13 during a medically necessary leave of absence. Although it is not clear from Mr.  
14 Bobrik's papers, he may also be claiming that his termination violated the FMLA. To  
15 succeed on an FMLA claim, a plaintiff must show that he took an FMLA-protected leave  
16 and that he suffered an adverse employment action as a result. Bachelder v. America  
17 West Airlines, Inc., 259 F.3d 1112, 1124-25 (9th Cir. 2001).

18 Mr. Bobrik has no evidence that he suffered an adverse employment action as a  
19 result of his FMLA leave. The court assumes for the purpose of these motions that the  
20 four-week leave (and subsequent modifications thereto) that Dr. Chilczuk recommended  
21 qualified as FMLA-protected leave.<sup>1</sup> NWCR's insistence that Mr. Bobrik attend a  
22 meeting at NWCR to discuss accommodations of his disability was not an adverse  
23 employment action. At that point, NWCR had received clarifying information from Dr.  
24 Chilczuk that established definitively that Mr. Bobrik's condition would not prevent him  
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27 <sup>1</sup>NWCR's argument that Mr. Bobrik's failure to provide proper notice of his leave  
28 precludes FMLA protection may have merit, but the court need not reach the issue.

1 from coming to work for a meeting. Mr. Bobrik admits that he was capable of attending.  
2 As to his termination at the conclusion of that meeting, the court finds no evidence  
3 supporting the notion that Mr. Bobrik's FMLA leave motivated NWCR's decision.  
4 NWCR's stated reason for the termination is Mr. Bobrik's refusal to participate in a  
5 discussion of accommodating his disability in the wake of the NWCR reorganization  
6 leading up to and including the March 10, 2003 meeting. The court has reviewed Mr.  
7 Bobrik's deposition testimony regarding the meeting and finds that Mr. Bobrik's own  
8 admissions establish that NWCR had ample basis to terminate him. Mr. Bobrik called  
9 Mr. Schindler a "bigot" and told him he would "do well as some commandant in a Nazi  
10 concentration camp." Bobrik Dep. at 250. Mr. Bobrik walked out of the meeting  
11 without ever discussing his need for additional disability accommodation. Neither the  
12 FMLA nor Washington law prohibits an employer from terminating an employee who  
13 verbally assaults other employees, or who walks out of a meeting in violation of a  
14 supervisor's request that he remain, or who refuses to participate in the process of  
15 developing reasonable disability accommodations. The court also finds no evidence that  
16 NWCR's stated reasons for terminating Mr. Bobrik were pretextual. NWCR's  
17 uninterrupted history of accommodating Mr. Bobrik's disability is more than sufficient to  
18 overcome any claim of pretext.  
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20 **C. Mr. Bobrik Has Not Provided Evidence to Sustain His Retaliation Claim.**

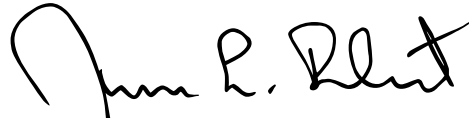
21 Mr. Bobrik's retaliation claim fails for the same reasons as his FMLA claim.  
22 Under Washington law, a plaintiff claiming retaliation must show that he engaged in a  
23 protected activity, that he suffered an adverse employment action, and that retaliation was  
24 a "substantial factor" in the adverse employment action. Washington v. Boeing Co., 19  
25 P.3d 1041, 1049 (Wash. Ct. App. 2000). The court assumes that Mr. Bobrik's taking  
26 FMLA leave and his petitioning for disability accommodation are protected activities.  
27 The court also notes that there is evidence that Mr. Bobrik had notified the Seattle Office  
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1 for Civil Rights (“OCR”) of his complaints against NWCR, or that at least he had  
2 notified NWCR that he intended to file a complaint with OCR. This is also a protected  
3 activity. There is no dispute that Mr. Bobrik’s termination was an adverse employment  
4 action. As discussed above, however, NWCR has stated several legitimate bases for  
5 terminating Mr. Bobrik, none of which are related to his protected activities. Mr. Bobrik  
6 has the burden to come forward with evidence that NWCR’s stated reasons are merely  
7 pretextual, and he has not done so. The court thus grants summary judgment on Mr.  
8 Bobrik’s retaliation claim.

#### IV. CONCLUSION

10 For the reasons stated above, the court GRANTS NWCR’s motion for summary  
11 judgment (Dkt. # 39) and DENIES Mr. Bobrik’s cross motion (Dkt. # 51). The court  
12 directs the clerk to enter judgment for NWCR.

13 Dated this 22nd day of July, 2005.



JAMES L. ROBART  
United States District Judge